

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

MARSHALL RAY PARTAIN,

Plaintiff,

v.

THOMAS KILLMAN, et al.,

Defendants.

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Case No. 6:20-cv-581-JDK-KNM

**ORDER ADOPTING THE REPORT AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE**

Plaintiff Marshall Ray Partain, a former Texas Department of Criminal Justice inmate proceeding pro se, filed this civil rights lawsuit pursuant to 42 U.S.C. § 1983. The case was referred to United States Magistrate Judge K. Nicole Mitchell for findings of fact, conclusions of law, and recommendations for disposition.


Before the Court are Plaintiff and Defendants Thomas Killman, Rudy Wilson, Andre Oliver, and Brandi Ferguson's joint motion to withdraw Plaintiff's pending motion to amend his complaint (Docket No. 62) and Plaintiff and Defendants Killman, Wilson, Oliver, and Ferguson's joint motion to dismiss pursuant to Federal Rule of Civil Procedure 41(a)(2) (Docket No. 63). On July 16, 2021, Judge Mitchell issued a Report recommending that the Court grant the parties' joint motion to withdraw (Docket No. 62) and joint motion to dismiss (Docket No. 63). No objections to that Report have been filed.

This Court reviews the findings and conclusions of the Magistrate Judge de novo only if a party objects within fourteen days of service of the Report and Recommendation. 28 U.S.C. § 636(b)(1). In conducting a de novo review, the Court examines the entire record and makes an independent assessment under the law. *Douglass v. United Servs. Auto. Ass’n*, 79 F.3d 1415, 1430 (5th Cir. 1996) (en banc), *superseded on other grounds by statute*, 28 U.S.C. § 636(b)(1) (extending the time to file objections from ten to fourteen days).

Here, no party objected in the prescribed period. The Court therefore reviews the Magistrate Judge’s findings for clear error or abuse of discretion and reviews his legal conclusions to determine whether they are contrary to law. *See United States v. Wilson*, 864 F.2d 1219, 1221 (5th Cir. 1989), *cert. denied*, 492 U.S. 918 (1989) (holding that, if no objections to a Magistrate Judge’s Report are filed, the standard of review is “clearly erroneous, abuse of discretion and contrary to law”).

Having reviewed the Magistrate Judge’s Report and the record in this case, the Court finds no clear error or abuse of discretion and no conclusions contrary to law. Accordingly, the Court hereby **ADOPTS** the Report and Recommendation of the United States Magistrate Judge (Docket No. 65) as the findings of this Court. It is therefore **ORDERED** that the joint motion to dismiss (Docket No. 63) is **GRANTED**. Plaintiff’s claims against Defendants Killman, Ferguson, Oliver, and Wilson are **DISMISSED** with prejudice. Moreover, the joint motion to withdraw (Docket NO. 62) is **GRANTED**. Plaintiff’s motion to amend (Docket No. 50) is hereby withdrawn as requested by the parties.

So **ORDERED** and **SIGNED** this **1st** day of **September, 2021**.



JEREMY D. KERNODLE
UNITED STATES DISTRICT JUDGE